

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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MATTHEW RAYMOND,

Plaintiff,

vs.

9:18-cv-1467

TROY MITCHELL, et al.,

Defendants.
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Transcript of Telephone Conference

held on June 16, 2021

the HONORABLE ANDREW T. BAXTER

United States Magistrate Judge, Presiding

APPEARANCES (by telephone)

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1 (10:30 a.m.)

2 THE COURT: Good morning. This is Raymond versus
3 Mitchell, 9:18-cv-1467. Can I have the appearances for
4 plaintiff, please?

5 MS. FREEMAN: Good morning, Judge Baxter. This is
6 Emma Freeman from Emery Celli Brinckerhoff Abady Ward &
7 Maazel for plaintiff Matthew Raymond, and I believe that I'm
8 joined by my colleague Katie Rosenfeld.

9 MS. ROSENFELD: Yes, good morning.

10 THE COURT: Good morning. For the Auburn
11 Correctional Facility defendants?

12 MR. MACKEY: Good morning, Your Honor. Patrick
13 Mackey on behalf of defendants Mitchell, Thomas, Harte,
14 Phillips, Giancola, Graham and Geer.

15 THE COURT: And do we have counsel for defendant
16 Hoppins on the line?

17 MS. BAKER: Yes, we do, Judge. Laurie Baker for
18 defendant Hoppins.

19 THE COURT: So the plaintiff moved to quash a
20 defense subpoena directed to the New York State Board of
21 Parole for the plaintiff's parole records, that is docket
22 number 115. The defendants have opposed the motion to quash
23 at docket number 122.

24 I am prepared to decide that today. I don't know
25 if the parties feel like they need any supplemental argument

1 beyond the papers that you submitted. Start with the
2 plaintiff.

3 MS. FREEMAN: Good morning, Your Honor. I would
4 just like to say a few things briefly with your leave.

5 THE COURT: Just let me know who's speaking,
6 please.

7 MS. FREEMAN: This is Emma Freeman for the
8 plaintiff.

9 THE COURT: Okay.

10 MS. FREEMAN: There are two key issues on this
11 motion. One is the question of the applicability of
12 Executive Law 259-k, which under New York State law creates a
13 confidentiality privilege that shields the parole records
14 which defendants are seeking from disclosure. And the second
15 question under Rule 26 is whether the parole records
16 notwithstanding any privilege are relevant and discoverable
17 and proper for disclosure to the defendants in this case from
18 the Parole Board.

19 On the first point, the brief that was submitted by
20 the defendants seems to imply that Mr. Raymond doesn't have
21 standing because there is no federal parole confidentiality
22 privilege. And that is simply not the law. It's not federal
23 law; it's certainly not the law in the Second Circuit and in
24 the Northern District of New York. A number of cases which
25 we cited in the footnote to our brief make it very clear that

1 all that is needed to have standing to quash a third-party
2 subpoena is a claim of some personal right or privilege with
3 respect to the documents sought.

4 The documents we're talking about are
5 Mr. Raymond's, they're his parole file. And the request,
6 which is quite overbroad, which I'll turn to in a moment, is
7 for his entire parole file from all of time related to any
8 offenses or alleged offenses with no limitations whatsoever.
9 If Mr. Raymond doesn't have a claim of some personal right to
10 those documents, I'm not sure what documents he would have
11 standing to seek to quash. There is no relationship between
12 the existence of a federal privilege and the standing to
13 quash the subpoena which is uncontroverted under the relevant
14 case law.

15 As a second matter, the fact that there is no
16 federal privilege for parole records confidentiality has no
17 bearing on the Court's decision on the motion. It's
18 well-established both by the Second Circuit and the Northern
19 District that there is some deference owed to state law
20 privileges in federal matters like this, and the language is
21 that such state law privileges are owed serious
22 consideration.

23 And, in fact, the Northern District in a 2017
24 decision, *Burdick versus Town of Schroepfel*, the citation I'm
25 happy to provide, this Court itself acknowledged Section

1 259-k and held that the disclosure of a plaintiff's medical
2 records which were contained in its parole file were
3 presumptively invalid on the basis of the state law
4 privilege. And this Court should reach the same conclusion
5 here. There are heightened privacy interests at play where
6 parole records are at issue, and that's particularly the case
7 where as here the records sought don't have any relevance.

8 So moving to that second point, the Court will, as
9 you're aware, Judge, engage in a balancing test to determine
10 whether the weight to be afforded a state law privilege
11 outweighs the alleged need for the documents. And in this
12 case the scale heavily weighs against disclosure and in favor
13 of quashing the subpoena.

14 Our firm has been practicing in this area for many
15 years and in no federal excessive force civil rights case
16 that we've ever seen has a plaintiff's parole file been
17 deemed relevant and discoverable. And it's telling that in
18 Mr. Mackey's opposition he doesn't cite any federal civil
19 rights, much less excessive force cases like this one, where
20 the parole file was deemed relevant and discoverable.

21 So for that reason, Your Honor, we see the subpoena
22 as a fishing expedition, and that it's based largely on,
23 according to Mr. Mackey's motion, not prior convictions but
24 allegations of criminal misconduct that post date the 2016
25 assault which this case is all about. That there might be

1 some marginal impeachment value to materials that he imagined
2 could be found in the parole file is simply not enough to
3 outweigh Mr. Raymond's privacy interest, his personal right
4 to the documents, and the weight of the state law privilege,
5 which we submit should weigh heavily here. None of the cases
6 that Mr. Mackey has submitted on behalf of defendants are on
7 point. Some of them are state law criminal cases. The
8 disclosure of parole records there is far afield from what it
9 would mean for defendant to have unfettered access to the
10 files in this case, which is about defendants and their
11 assault on Mr. Raymond, who now is said to have a second
12 surgery on his bladder necessitated by the sequela of that
13 assault.

14 Your Honor, other than that, unless you have
15 questions for me, I'm happy to rest on the papers, and I'll
16 just conclude by saying again that the request is profoundly
17 overbroad and if the Court is inclined to grant any part of
18 it, I would like to be given the opportunity to speak about
19 limitations on the request, which should not stand as it was
20 submitted. Thank you.

21 THE COURT: Mr. Mackey.

22 MR. MACKEY: Good morning, Your Honor. Thanks,
23 Your Honor.

24 Just briefly, Your Honor, I'm just going to touch
25 upon a couple of things that Ms. Freeman mentioned rather

1 than really going into what I've already argued in our
2 opposition papers.

3 One thing I just want to clarify, we're not looking
4 for the entire history of Mr. Raymond's parole file. I
5 believe he has had two different occasions where he was
6 incarcerated, and we're not interested in his first parole
7 which came after his first time he was incarcerated; we're
8 just interested in his most recent parole, which I believe
9 started in February of 2020. So we're really just looking
10 for documents for the last year and a half related to his
11 most recent stint on parole. So that's just to clarify
12 exactly what we're looking for. So we're not looking for an
13 overbroad history of his parole, just the most recent parole.

14 Ms. Freeman mentioned the cases they cited in their
15 footnote related to standing, and when I reviewed those
16 cases, I did see that two of them, *Meyer Corp. U.S. versus*
17 *Alfay Designs*, and *Samad Brothers versus Bokara Rug Company*,
18 both of those the Court found that there was no standing. So
19 the cases the plaintiff is even citing favors the position
20 that they don't have standing to bring the motion that they
21 brought. And the third case in their footnotes, *Solow versus*
22 *Conseco*, had dealt with banking records, had nothing to do
23 with parole records.

24 So I think the lack of case law that supports their
25 standing argument kind of helps my position which states that

1 it's a state privilege, it really doesn't apply to this case,
2 which is strictly, or for the most part, a question of
3 federal law, and that there really isn't any standing in this
4 case because there is no privilege or federally based statute
5 of law protecting state parole records, which is what we're
6 fighting over today.

7 Also with respect to actually the relevance of the
8 documents, we did cite -- and I think it's important that we
9 actually cited state law rather than federal law in this
10 particular matter because if we have state courts allowing
11 the disclosure of parole records when the executive law is
12 actually applicable to that particular matter, it shows that
13 the state courts even are willing to allow parole records to
14 be released if they find that their relevance is present in
15 that particular case.

16 And the one case I think that's most important is
17 the *People versus Price* case that we cited, and in that
18 particular case the Court allowed probation records to be
19 disclosed strictly for impeachment purposes. They felt that
20 the parties seeking the probation records could have used
21 those records to impeach the party in that case. And I think
22 that's a major part of our argument with respect to relevance
23 here, Your Honor, is that there appears to be several
24 incidences where Mr. Raymond has provided false statements
25 since being released; he has done it in his employment

1 applications, he did it under the penalty of perjury on a
2 federal tax form. And if any of this information is also
3 being disclosed with the parole officer and is part of the
4 parole records, or any similar information is being provided
5 to his parole officer and is part of the parole records, it
6 could definitely be used for impeachment purposes. He is
7 lying under oath and he has already lied under penalty of
8 perjury on this one document, and then he is lying on
9 employment applications. And if there is anything similar in
10 the records of the Parole Board, I think that would be quite
11 relevant in this case for impeachment-wise.

12 Also even beyond impeachment purposes, if there is
13 anything in the parole records related to his activities that
14 essentially contradict what he is claiming. He is claiming
15 his injuries are debilitating and he can't work. Well, there
16 may be information in the parole records as to why he is not
17 working. It may be because of these recent arrests and it
18 has nothing to do with his injuries or alleged injuries.

19 And so there are multiple reasons why we think that
20 the parole records could be of interest to defense in this
21 case, as I just laid out it's for impeachment purposes and
22 also there may be information in there that's contradicting
23 what he is stating about his injuries. He is stating he
24 can't work because of his injuries. Well, maybe he can't
25 work because of recent criminal activity and that would be

1 included in his parole record.

2 So, to sum it up, Your Honor, there is history of
3 cases of courts allowing parole or probation records to be
4 released for impeachment purposes and other reasons. The
5 other case we cited related to that was the *Maggio* case, and
6 I think in this particular matter where we have evidence of
7 Mr. Raymond engaging in nefarious actions after being
8 released in February 2020, it kind of highlights the need to
9 see what the Parole Board has in its hands to see if there is
10 more information there that could be helpful to the defense
11 in this case.

12 And the last thing I'll add, and this was a brief
13 statement in my papers, is that at no instance has the Parole
14 Board ever come to us and say, hey, we cannot give you these
15 records, these are privileged. In the communications I've
16 had with the Parole Board, they were looking or basically
17 just coordinating with us to have those records produced,
18 which obviously was put to a hold once Your Honor said to
19 contact the Parole Board and tell them don't produce anything
20 yet until this motion, which we did. But at no time has the
21 Parole Board advised us that they have information that they
22 can't turn over, which I think is telling as well.

23 Thanks, Your Honor.

24 MS. FREEMAN: Your Honor, if I could respond
25 briefly on three points?

1 THE COURT: Briefly.

2 MS. FREEMAN: First, Your Honor, with respect to
3 standing, I just want to note that Mr. Mackey alludes to
4 cases that he has cited, but the two cases cited with respect
5 to standing in his words, *Koster* and *In re Grand Jury*
6 *Subpoena*, don't address standing, standing in either
7 decision, those just concern the existence of federal
8 privilege or lack thereof.

9 So I would submit that the Court should not
10 consider those cases in making a standing determination given
11 the case law that we cited in our footnote which, regardless
12 of the outcome on the facts, supports the clear principle
13 that where there is a personal interest in the documents,
14 which there is here, standing is established.

15 Second, Your Honor, as to *People versus Price*, that
16 case has nothing to do with this, and as a matter of fact, it
17 was a state criminal trial, and the parole records sought
18 were directly relevant to the identification of the defendant
19 in that suit. There was a particularized need for some
20 access to the parole file that is very far afield from what's
21 going on here, which is a fishing expedition for supposed
22 impeachment material in an excessive force case.

23 And on that point, Your Honor, finally, whatever
24 impeachment value these materials supposedly have is too far
25 afield from the facts of this case to weigh heavily in the

1 Court's analysis. This is a case about a man who was
2 viciously assaulted and who is suffering from serious urinary
3 and bladder injuries years later as a result. Mr. Mackey is
4 citing in his papers the alleged failure to check a
5 particular box on an employment form. Those two things are
6 not sufficiently related to one another to make impeachment
7 on that point relevant and ultimately appropriate for
8 consideration at trial. Thanks, Your Honor.

9 THE COURT: Let me start by addressing standing.
10 The defense counsel argues that plaintiff lacks standing to
11 move to quash the third-party subpoena because he cannot
12 assert a federal privilege that would block the subpoena. I
13 agree with Ms. Freeman that that position is not consistent
14 with the case law and standing in this circuit.

15 The law in the Second Circuit is cogently
16 summarized in *Hughes versus Twenty-First Century Fox, Inc.*,
17 327 F.R.D. 55, 57 (S.D.N.Y. 2018). I'm going to quote that
18 but leave out the citations that appear in *Hughes*. Parties
19 generally do not have standing to object to subpoenas issued
20 to non-party witnesses. However, "exceptions are made for
21 parties who have a claim of some personal right or privilege
22 with regard to the documents sought." "Examples of such
23 personal rights or privileges include the personal privacy
24 right and privilege with respect to information contained in
25 psychiatric and mental health records, claims of

1 attorney-client privilege, and other privacy interests,
2 including those relating to salary information and personnel
3 records."

4 So, in *Hughes*, the Court found that the third-party
5 subpoena seeking plaintiff's sexual history with other men
6 implicated a personal privacy interest that gave the
7 plaintiff standing to move to quash. The subpoenaed
8 information clearly did not implicate a federal privilege,
9 which is also true for some of the other categories of
10 privacy interests that *Hughes* recognized as providing for
11 standing.

12 In *Solow versus Conseco, Inc.*, a Southern District
13 of New York case from January 18, 2008, reported at 2008 WL
14 190340, at page 3 to 4, the Court stated, and I'm quoting
15 again, "The Advisory Committee Notes to the 1991 amendments
16 of Rule 45 observe that clause c(3)(B)(I) authorized the
17 court to quash, modify or condition the subpoena to protect
18 the person subject to or affected by the subpoena from
19 unnecessary or unduly harmful disclosures of confidential
20 information." Thus, courts have recognized that parties with
21 a privacy interest in subpoenaed documents have standing to
22 oppose the subpoena.

23 While *Solow* involved a subpoena for bank records,
24 which would not be protected by a federal privilege, the
25 Court noted that privacy interests in other types of

1 documents were sufficient to provide standing to move to
2 quash a third-party subpoena. Quoting again from *Solow*, "The
3 inquiry courts apply is whether the information itself is
4 private, confidential, privileged, or highly sensitive, and
5 not the form that the records take."

6 While there doesn't seem to be much federal case
7 law in this circuit relating to subpoenas for parole records,
8 it is clear to this Court that a person's parole records
9 implicate a personal privacy interest that provides standing.
10 New York Executive Law Section 259-k, quoting now, "provides
11 a clear legislative intent to establish and maintain the
12 confidentiality of parole records." That's a quote from
13 *Collins versus New York State Division of Parole*, a 3d
14 Department case reported at 251 A.D.2d 738, at 738 to 739.
15 Also the defense brief acknowledges federal regulations,
16 which also recognize the confidentiality of parole records.
17 Those are at 28 CFR, Section 2.88.

18 I'm also going to cite a couple of cases from other
19 districts which are not binding in this circuit but I think
20 are instructive. The first is *Chavez versus the City of*
21 *Framington*, a District of New Mexico case from August 18,
22 2015, reported at 2015 WL 13659473, at page 2, which held
23 that, "Defendants concede plaintiff has standing to challenge
24 the third-party subpoena seeking his parole records in
25 connection with the civil rights action."

1 And I would also cite *Castellani versus City of*
2 *Atlantic City*, a District of New Jersey case from March 31,
3 2017, reported at 2017 WL 1201755, at page 2, which held
4 that, "A plaintiff in a civil rights action had standing to
5 move to quash a third-party subpoena seeking records relating
6 to his participation in a state pretrial intervention
7 program."

8 I'll now turn to the merits of the motion to quash.
9 Plaintiff seeks to quash the defendants' subpoena to the New
10 York State Parole Board in light of the recognition that such
11 records are confidential under New York Executive Law,
12 Section 259-k and the implementing regulations, 9 NYCRR
13 8000.5, which preclude release, and I'm quoting from the reg
14 now, "except by the Chairman upon good cause shown."

15 The case law cited by the defendant makes clear
16 that in a 1983 civil rights action, even when there are also
17 state law claims, federal common law on privilege, not state
18 law, applies. For example, *Koster versus Chase Manhattan*
19 *Bank* (S.D.N.Y. September 5, 1984) reported at 1984 WL 833, at
20 page 3. That does not mean, however, that state law
21 privileges are irrelevant in discovery matters in federal
22 civil actions.

23 As stated in *Daniels versus City of New York*
24 (S.D.N.Y. March 8, 2001) reported at 2001 WL 228091, at
25 page 1, I'm quoting now, "State statutory privileges must be

1 construed narrowly and must yield when outweighed by a
2 federal interest in presenting relevant information to a
3 trier of fact." Nonetheless, "the policies underlying state
4 evidentiary privileges must still be given serious
5 consideration even if they are not determinative. Thus, as a
6 matter of comity, federal courts must balance the deference
7 to be accorded state law privileges with the need for the
8 information sought to be protected." And I've deleted -- or,
9 not cited the cases that were cited in that quote in the
10 *Daniels* case.

11 To the same effect is *Mercado versus Division of*
12 *New York State Police* (S.D.N.Y. 1998) reported at 989
13 F.Supp.2d 521, at 522 to 23, and I'm quoting again, "Federal
14 common law provides for some consideration of state law
15 privileges, since a strong policy of comity between state and
16 federal sovereignties impel federal courts to recognize state
17 privileges where this can be accomplished at no substantial
18 cost to federal substantive and procedural policies. To
19 resolve discovery disputes of this kind, a federal court must
20 balance the plaintiff's interests in disclosure against the
21 state's legitimate concern of protecting the confidentiality
22 of the officers' personnel file from unnecessary intrusions."

23 Although in a different context, that of a federal
24 habeas petitioner unsuccessfully seeking discovery of his own
25 parole records, a district court in this circuit indicated

1 that the petitioner would have to make a showing of good
2 cause to overcome the state law confidentiality protection
3 for parole documents under New York law. That case is
4 *Rossney versus Travis* (S.D.N.Y. January 17, 2003) reported at
5 2003 WL 135692, at pages 12 to 14, which was in turn affirmed
6 by the Second Circuit in 2004 in a case reported at 93 F.
7 App'x 285.

8 So most of the case law involving the
9 discoverability of parole records relates to cases where the
10 actions of the Parole Board or the Commission was being
11 challenged. There is little, if any, authority relevant to
12 our current situation where the defendants in a civil rights
13 action have made a blanket request for parole records of a
14 civil rights plaintiff pursuing claims unrelated to his
15 parole situation.

16 The closest federal civil rights case I found was
17 the District of New Mexico case I cited earlier, *Chavez*,
18 which I believe I cited in full, at pages 5 to 6, in which
19 the defense subpoenaed records from the New Mexico Department
20 of Corrections, which I'll refer to as the NMDC, as to which
21 both the NMDC and the plaintiff objected. New Mexico, like
22 New York, had a statutory privilege with respect to certain
23 parole documents, which in New Mexico included presentence
24 reports, pre-parole reports, parole and probation supervision
25 history, and the New Mexico Probation and Parole Act, or the

1 PPA, is the relevant New Mexico statute. And that's
2 reflected at page 2 in the *Chavez* case.

3 With respect to presentence reports, the Court
4 noted that it was unaware of any reason why state reports
5 should be considered less confidential than corresponding
6 federal reports and found that there was no compelling
7 reasons to order the disclosure of state presentence reports
8 because the defendants had other avenues to obtain the
9 information.

10 Quoting now from *Chavez* at pages 5 and 6, "With
11 regard to pre-parole reports and parole supervision
12 histories, a state statutory provision generally requiring
13 the confidentiality of documents is insufficient to prevent
14 their disclosure during a federal action. Nonetheless, the
15 Court may place the underlying reasons for the state statute
16 on the scale when balancing the competing interests at
17 stake."

18 Skipping ahead in my quote from *Chavez*, "Pre-parole
19 reports and parole supervision histories are prepared in
20 criminal cases to assist the Court in making difficult
21 decisions about the fate of a criminal defendant. To be
22 effective, the reports must contain frank assessments and
23 sensitive information. Routinely, subjecting these reports
24 to civil discovery could have a chilling effect on the
25 information contained in these reports. It is at least

1 partly for this reason that the New Mexico statute, the PPA,
2 protects their confidentiality for the purposes of state law.
3 While the Court again notes that the protection afforded by
4 the PPA does not require this Court to prevent the disclosure
5 of these documents, the Court finds that the NMDC's interests
6 in keeping these reports confidential easily outweighs the
7 defendant's need for the information in the reports.
8 Therefore, the Court will not order NMDC to produce them.

9 The other case I cited, *Castellani versus City of*
10 *Atlantic City*, applied similar reasoning and reached a
11 similar result in the context of a motion, filed by a
12 plaintiff in a civil rights case, to quash a defense subpoena
13 directed to the director of a court pretrial intervention
14 program for records relating to plaintiff's participation in
15 that program.

16 New Jersey law protected plaintiff's Pretrial
17 Intervention File from disclosure in civil matters, as the
18 *Castellani* case notes at page 3. That court acknowledged
19 that state evidentiary privileges are, quoting now, "strongly
20 disfavored in federal practice and must be narrowly drawn,"
21 but noted that the Court may in the interest of comity
22 recognize a state privilege, "to the extent that doing so
23 will not impose a substantial cost on federal policies."

24 And I would note that standard is very similar to
25 the standard reflected in some Second Circuit case law I

1 cited earlier, which although it deals with different state
2 law privileges. The Court found in *Castellani* that, and I'm
3 quoting again, "recognizing a privilege with respect to state
4 pretrial diversion records is consistent with federal policy
5 as it relates to federal pretrial diversion records." And
6 that's also from *Castellani* at page 6.

7 The *Castellani* court stated at page 4, I'm quoting
8 at length now, "The Court recognizes that statements made by
9 plaintiff and other witnesses to the incident giving rise to
10 this litigation, which may have been included in plaintiff's
11 PTI file, are probative and relevant. However, plaintiff's
12 PTI records are not the only source of this information and
13 the defendants acknowledge as much as they seek the
14 information for impeachment purposes, having already had
15 ample opportunity to develop the factual record and depose
16 plaintiff and numerous witnesses. Thus, the Court finds that
17 the recognition of the state privilege in this case will not
18 detrimentally impact the federal interest of ensuring a
19 complete factual record."

20 The *Castellani* defendants argued that they were,
21 quoting again, "entitled to investigate a deponent's
22 credibility with other statements made regarding the incident
23 and plaintiff's conduct," and that the statements may lead to
24 additional witnesses that have yet to be identified." But
25 the Court concluding that there was, quote, "no compelling

1 need for defendants to have statements in light of the
2 extensive discovery already conducted in this case."

3 So, based on the reasoning of these two cases,
4 which again are not binding in this circuit but which I find
5 persuasive, I'm going to quash the defense subpoena for
6 plaintiff's parole file. Federal regulations provide for the
7 confidentiality of federal parole records, as New York
8 Executive Law 259-k and the implementing regulations do for
9 New York State parole records.

10 As in *Chavez* and *Castellani*, the existence of a
11 comparable federal privacy protection for parole or pretrial
12 diversion records, warranted the federal court to credit and
13 balance those interests of the state and the plaintiff
14 reflected in the state privacy laws.

15 The defense made an expansive request for the
16 plaintiff's entire parole file, although acknowledges now
17 that they're limiting it to his most recent period on parole,
18 but they have provided nothing beyond speculation as to how
19 the contents of that file would be relevant to the excessive
20 force incident on September 14th, 2016, when plaintiff was
21 confined by DOCCS and not on parole.

22 By contrast, in *Castellani*, the plaintiff was on
23 pretrial intervention based on the same incident that was the
24 basis for a civil rights suit, and the Court acknowledged
25 that there could be relevant information in the PTI file, but

1 quashed the subpoena anyway, because the defendants had other
2 ways to obtain similar information that were less intrusive
3 on the plaintiff's and the state's interest in maintaining
4 the confidentiality of the pretrial intervention records.

5 As in *Chavez* and *Castellani*, the defense in this
6 case has extensive information about plaintiff's criminal
7 history and other incidents of apparent misconduct or
8 criminal activity that led to police intervention, which the
9 defendants also seek through the subpoena to the Board of
10 Parole.

11 The defense in this case argues that plaintiff's
12 parole files could provide general credibility information,
13 not related to the excessive force incident that is subject
14 to plaintiff's civil rights action; e.g., evidence that,
15 quoting from defendants' papers now, "He has been very active
16 in breaking the law since his release from custody in
17 February 2020," or evidence, quoting again, "of false
18 information that he has provided to his parole officer,"
19 highlights the speculative nature of their subpoena here. I
20 was quoting from the defendants' brief at pages 9 to 11,
21 docket number 122-11.

22 Again, the defense clearly already has access to
23 much of this information and is otherwise fishing for
24 additional credibility information, with no regard for the
25 interest of the state and the plaintiff in the sensitivity

1 and confidentiality of the information in that parole file.

2 And I would cite a couple further cases on that
3 point; *People versus Casanova*, a Supreme Court case from
4 Bronx County from 1979, reported at 422 N.Y.S.2d 307, which
5 held, and I'm quoting, "Mere speculation and surmise that the
6 parole file contains some facts with which to impeach the
7 witness is insufficient to compel disclosure of all or part
8 of the parole records. *United States versus Fernandes*, a
9 Western District of New York case from 2015, reported at 115
10 F.Supp 3d 375, at 380, which held, "Defendant failed to offer
11 any factual basis for disclosure of the PSI of the potential
12 witness against him." Quoting now from *Fernandes*, "Instead,
13 defendant's request is general and unspecific, amounting to
14 nothing more than a fishing expedition in the hopes that the
15 disclosure of the PSIs may ultimately lead to the disclosure
16 of information that could be used on cross-examination for
17 impeachment."

18 In sum, the defendants are seeking the parole
19 records that bear no relation to the facts underlying the
20 incident which is the basis for plaintiff's civil rights
21 claims. They are fishing for general impeachment material
22 from very sensitive parole records, although they have
23 already obtained extensive discovery of other sources of
24 comparable impeachment information.

25 I am not persuaded that the defendants have

1 established the relevance of or the need for the subpoenaed
2 information to an extent that outbalances the privacy
3 interests of the plaintiff, as reflected in the New York
4 Executive Law Section 259-k and the implementing regulations.

5 Accordingly, I'm going to grant plaintiff's motion
6 and quash the subpoena to the New York State Division of
7 Parole.

8 So, I'm going to enter a very brief text order
9 confirming my ruling, which either side -- I guess I'm going
10 to direct you, Mr. Mackey, to advise the Parole Board of that
11 ruling, but I will rely on the record I've made during this
12 stenographically recorded conference for the underlying
13 reasons.

14 I am hesitant to ask, but is there anything else in
15 this case that requires my attention at this time?

16 MS. FREEMAN: Not from plaintiff, Your Honor.

17 MS. BAKER: Not from me.

18 MR. MACKEY: Not from the defendants either, Your
19 Honor.

20 THE COURT: Ms. Baker, I apologize, I didn't ask
21 you to chime in, but I didn't really think you had a dog in
22 this fight.

23 MS. BAKER: I don't. Just sitting here quietly.

24 THE COURT: Everybody take care. If anything else
25 comes up that requires my attention, let me know, because I

1 don't think we have any further conferences or anything
2 further scheduled. Take care.

3 (Court adjourned at 11:07.)

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6 C E R T I F I C A T I O N
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8 I, EILEEN MCDONOUGH, RPR, CRR, Federal Official
9 Realtime Court Reporter, in and for the United States
10 District Court for the Northern District of New York,
11 do hereby certify that pursuant to Section 753, Title 28,
12 United States Code, that the foregoing is a true and correct
13 transcript of the stenographically reported proceedings held
14 in the above-entitled matter and that the transcript page
15 format is in conformance with the regulations of the
16 Judicial Conference of the United States.
17
18
19

20 *Eileen McDonough*

21 EILEEN MCDONOUGH, RPR, CRR
22 Federal Official Court Reporter
23
24
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